



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2019-0542]**

**RIN 1625-AA00**

### **Safety Zone; Delaware Bay, Lewes, DE to Cape May, NJ**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary moving safety zone on the waters of Delaware Bay, between Lewes, Delaware, and Cape May, New Jersey, from 8 a.m. through 3 p.m. on August 18, 2019, during the 2019 DeSatnick Foundation Cape to Cape Paddle. The safety zone is necessary to ensure the safety of participant vessels, spectators, and the boating public during the event. This regulation prohibits persons and non-participant vessels from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port (COTP) Delaware Bay or a designated representative.

**DATES:** This rule is effective from 8 a.m. through 3 p.m. on August 18, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0542 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Petty Officer Thomas Welker, Sector Delaware Bay, Waterways Management Division, U.S. Coast Guard, telephone (215) 271-4814, e-mail Thomas.J.Welker@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest to do so. There is insufficient time to allow for a reasonable comment period prior to the date of the event. The rule must be in force by August 18, 2019. We are taking immediate action to ensure the safety of event participants, commercial traffic, and the general public from hazards associated with a paddleboat event crossing the Delaware Bay.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to mitigate the potential safety hazards associated with a paddleboat event in this location by August 18, 2019.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Delaware Bay (COTP) has determined that potential hazards associated with this paddleboat event will be a safety concern for anyone within 50 yards in front of the lead safety vessel preceding the first event participants, to 50 yards behind the safety vessel trailing the last event participants, and at all times, extend 100 yards on either side of the safety vessels and participants. The purpose of this rule is to ensure safety of event participants, commercial traffic, and the general public during the scheduled event.

### **IV. Discussion of the Rule**

This rule establishes a temporary moving safety zone on certain navigable waters in the Delaware Bay, between Lewes, Delaware, and Cape May, New Jersey, during the 2019 DeSatnick Cape to Cape Paddle. The moving safety zone encompasses all waters within 50 yards in front of the lead safety vessel preceding the first event participants, to 50 yards behind the safety vessel trailing the last event participants, and at all times extend 100 yards on either side of safety vessels and participants.

The marine event course begins at the Lewes Ferry Terminal in Lewes, Delaware, moves north through the main shipping channel, and terminates at the Queen Street beach

in Cape May, New Jersey. The event is scheduled to take place from 8 a.m. to 3 p.m. on August 18, 2019. There are approximately 50 participants anticipated as well as multiple safety vessels including private vessels and vessels from multiple local, state, and federal agencies.

No person or non-participant vessel will be permitted to enter, transit through, anchor in, or remain within the safety zone without obtaining permission from the COTP Delaware Bay or a designated representative. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the COTP Delaware Bay or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP Delaware Bay or a designated representative. The Coast Guard will provide public notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and by on-scene actual notice from designated representatives.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM

has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

The impact of this rule is not significant for the following reasons: (1) although persons and vessels would not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the COTP Delaware Bay or a designated representative, they would be able to operate in the surrounding area during the enforcement period; (2) persons and vessels would still be able to enter, transit through, anchor in, or remain within the regulated area if authorized by the COTP Delaware Bay or a designated representative; (3) the safety zone would move at the pace of event patrol vessels and participants, thus only impacting certain waters of the Delaware Bay for a limited time allowing for transiting vessels to adjust; and (4) the Coast Guard would provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners, Broadcast Notice to Mariners, or by on-scene actual notice from designated representatives.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone

may be small entities, for the reasons stated in section IV.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have

determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

#### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a moving safety zone that would prohibit

persons and vessels from entering, transiting through, anchoring in, or remaining within a limited area on the navigable water in the Delaware Bay, during a paddleboard marine event lasting approximately six hours. Normally, such actions are categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under ADDRESSES.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0542 to read as follows:

§ 165.T05-0542 Safety Zone; Delaware Bay, Lewes, DE to Cape May, NJ.



(a) *Location.* The moving safety zone will encompass all waters within 50 yards in front of the lead safety vessel preceding the first event participants, to 50 yards behind the safety vessel trailing the last event participants, and 100 yards on either side of participant and safety vessels during the 2019 DeSatnick Foundation Cape to Cape Paddleboard event. The safety zone will move with the safety vessels and participants as they transit from the Lewes Ferry Terminal in Lewes, Delaware, moving north through the Delaware Bay main shipping channel, and terminate at the Queen Street Beach in Cape May, New Jersey. The safety zone will move at the pace of event patrol vessels and participants.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Delaware Bay in the enforcement of the safety zone.

(c) *Regulations.* (1) All non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated areas unless authorized by official event patrol. Vessels already moored or anchored may stay moored or anchored within the zone, but must be authorized by the designated representative prior to transiting within the zone.

(2) Designated representatives may control vessel traffic throughout the regulated areas as determined by the prevailing conditions.

(3) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated areas by contacting the Captain of the Port or a designated representative via VHF radio on channel 13 or 16.

(4) If authorization is granted by the Captain of the Port or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port or a designated representative.

(d) *Enforcement period.* This rule will be enforced from 8 a.m. through 3 p.m. on August 18, 2019, unless cancelled earlier by the Captain of the Port.

Dated: July 29, 2019.

Scott E. Anderson,  
Captain, U.S. Coast Guard,  
Captain of the Port Delaware Bay.

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